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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 12, 2001

APPLICATION OF

HENRY COUNTY POWER, LLC

CASE NO. PUE010300

For a certificate of public
convenience and necessity under
the Virginia Utility Facilities
Act to construct, own, and operate
electric generation facilities

ORDER FOR NOTICE AND HEARING

On May 10, 2001, as supplemented July 5, 2001, Henry County Power, LLC ("Henry County Power" or the "Applicant"), filed with the State Corporation Commission ("Commission") an application with supporting testimony and exhibits for a certificate of public convenience and necessity under the Utility Facilities Act, Chapter 10.1 (§ 56-265.1 et seq.) of Title 56 of the Code of Virginia (the "Code") to construct, own, and operate electric generation facilities in Henry County, Virginia, at Axton (the "Project").

The proposed Project is a natural gas-fired, combined cycle generation facility with net capacity of up to 1,100 MW. Henry County Power expects construction to begin in the first quarter of 2002 and commercial operation to begin in the summer of 2004.

The Applicant states the proposed site is presently zoned for power generation with ready access to electric transmission facilities and natural gas pipelines. The facility would be interconnected to American Electric Power's 765 kV and 138 kV Axton Substations that are adjacent to the Project site. Natural gas for the facility would be provided by a new gas line with service from the interstate pipeline facilities of Transcontinental Gas Pipeline Corporation located approximately 8 miles from the Project site. The location of the Project site is described in the public notice prescribed in Ordering Paragraph (17) of this Order.

Henry County Power is a limited liability company that is an affiliate of Cogentrix Energy, Inc. ("Cogentrix"). Cogentrix will provide development services, and Henry County Power will contract with another Cogentrix affiliate to provide operating services.

Henry County Power seeks, pursuant to § 56-265.2 B, an exemption from the ratemaking and other regulatory requirements of Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code. The Applicant also requests that the Commission waive its Information Requirements in Support of Petitions for Independent Power Facilities ("IPP Rules"), 20 VAC 5-302-10, which requires applicants to give the Commission 30 days' notice of an application. Finally, the Applicant requests a waiver of, or

exemption from, § 56-234.3 of Chapter 10, which requires Commission approval before an electric utility makes financial commitments or expenditures for new generation facilities of 100 MW capacity or larger.

In support of its request for an exemption pursuant to § 56-265.2 B, the Applicant states that it will sell power on a merchant basis exclusively at wholesale and will be subject to regulation by the Federal Energy Regulatory Commission ("FERC"). The Applicant also states that the Project will not be in the rate base of any regulated utility in Virginia, will not adversely affect the rates or reliability of service of any regulated electric utility, and will not otherwise be inconsistent with the public interest.

In support of its request for a waiver of, or exemption from, § 56-234.3 of Chapter 10, Henry County Power states that the Project requires expenditures for site preparation and permitting before the Commission will take final action. The Applicant would undertake these activities at its own risk.

NOW THE COMMISSION, having considered the application, is of the opinion and finds pursuant to §§ 56-265.2, 56-580 D, and related provisions of Title 56 of the Code, that this matter should be docketed.¹ We will set the application for a

¹ Counsel for the Commission's Staff notified the Applicant's counsel by letter on May 31, 2001, of certain additional information necessary to support Henry County Power's application pursuant to our IPP Rules, 20 VAC 5-

certificate and all issues except those detailed herein for hearing before a hearing examiner. The Commission will direct the Applicant to give notice so that interested persons and agencies may comment and participate in this proceeding. We will also direct the Commission Staff to investigate the application.

While Henry County Power offered no reason for not complying with our requirement set out in 20 VAC 5-320-10 to give the Commission advance notice of an application, the Commission will grant the waiver. The advance notice requirement is intended to alert the Commission and permit allocation of resources so as to expedite processing once the application is filed.

With regard to § 56-234.3 of the Code, the Commission will consider whether a waiver should be granted to the construction approval requirement. Any waiver granted would be interim pending entry of a final order in which we determine whether the facilities should be exempted from the requirements of Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code. We will establish procedures for addressing this issue. The grant or denial of an interim waiver of the construction approval requirement will not determine whether the Commission will or

302-10 et seq. We are advised by the Staff that the Applicant has represented it will be filing the additional information required.

will not authorize construction and operation of the proposed generation facilities.

Accordingly, IT IS ORDERED THAT:

(1) As provided by §§ 56-46.1, 56-265.2, 56-580 D, and related provisions of Title 56 of the Code of Virginia, this matter shall be docketed as Case No. PUE010300 and all associated papers shall be filed therein.

(2) Henry County Power's request for a waiver of the Commission's Information Requirements in Support of Petitions for Independent Power Facilities, 20 VAC 5-320-10, is hereby granted.

(3) On or before July 25, 2001, the Applicant shall file with the Clerk any additional direct testimony and exhibits by which it expects to establish its case.

(4) On or before August 6, 2001, any interested person may file with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 233218-2118, an original and fifteen (15) copies of comments on Henry County Power's request for an interim waiver of the requirements of § 56-234.3 of the Code of Virginia and any request for a hearing on the issue, and shall serve one (1) copy on counsel to the Applicant, Stephen H. Watts, II, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030. Any request for a hearing should state the specific

grounds and describe the evidence that the requesting person intends to introduce at such hearing.

(5) On or before August 10, 2001, the Commission Staff may file with the Clerk an original and fifteen (15) copies of any comments on the request for a waiver and shall serve a copy on the Applicant and all persons filing comments or requests for a hearing.

(6) On or before August 16, 2001, the Applicant may file with the Clerk an original and fifteen (15) copies of any response to comments on its request for a waiver, and shall serve a copy on all persons filing comments or requests for a hearing.

(7) A public hearing scheduled for October 17, 2001, at 10:00 a.m. in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive comments from members of the public and to receive evidence on the application.

(8) As provided by § 12.1-31 of the Code of Virginia and the Commission's Rules of Practice and Procedure ("the Rules"), 5 VAC 5-20-120, a hearing examiner is hereby appointed to conduct all further proceedings in this matter.

(9) On or before August 15, 2001, any person or entity who expects to participate as a respondent shall file with the Clerk at the address set out in Ordering Paragraph (4) a notice of

participation as required by the Rules, 5 VAC 5-20-80 B, and shall be a party to the proceeding. All notices of participation shall refer to Case No. PUE010300 and shall serve a copy on counsel to the Applicant identified in Ordering Paragraph (4) and on Commission Staff counsel assigned to the matter, C. Meade Browder, Jr., Office of General Counsel, State Corporation Commission. P.O. Box 1197, Richmond, Virginia 23218-1197. Any organization, corporation, or government entity participating as a respondent must be represented by counsel as required by the Rules, 5 VAC 5-20-30.

(10) Within five (5) days of receipt of a notice of participation as a respondent, the Applicant shall serve upon each respondent a copy of this Order, a copy of the application, and all materials now or hereafter filed with the Commission, unless these materials have already been provided.

(11) On or before August 29, 2001, written comments on Henry County Power's application may be filed with the Clerk at the address set out in Ordering Paragraph (4). Comments must refer to Case No. PUE010300.

(12) On or before August 29, 2001, each respondent shall file with the Clerk the testimony and exhibits by which it expects to establish its case and shall serve a copy of the exhibits on counsel for the Applicant and on all other parties.

The respondent shall comply with the Rules, 5 VAC 5-20-140, 5 VAC 5-20-150, and 5 VAC 5-20-240.

(13) The Commission Staff shall investigate Henry County Power's application and, on or before September 28, 2001, shall file with the Clerk the testimony and exhibits it intends to present at the hearing and copies of any workpapers that support the recommendations made in its testimony. Copies of the testimony and exhibits shall be served on all parties.

(14) On or before October 9, 2001, the Applicant may file with the Clerk all testimony and exhibits that it expects to offer in rebuttal to direct testimony and exhibits of the Commission Staff and respondents and shall serve one copy on all parties. Additional rebuttal evidence may be presented in response to evidence which was not filed, but elicited at the hearing, provided that the need for the additional rebuttal evidence is timely addressed by motion during the hearing.

(15) Forthwith upon receipt of this Order, the Applicant shall make available for inspection during regular business hours copies of its application, testimony, exhibits, this Order, and all other materials filed in this proceeding at the Blue Ridge Regional Library, 310 East Church Street, Martinsville, Virginia 24115.

(16) On or before July 25, 2001, the Applicant shall publish as display advertising (not classified) once a week for

two (2) consecutive weeks in newspapers having general circulation in Henry County and its surrounding area the following notice and a sketch map showing the location of the proposed facilities:

NOTICE TO THE PUBLIC OF AN APPLICATION BY
HENRY COUNTY POWER, LLC, FOR A CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY TO
CONSTRUCT, OWN, AND OPERATE ELECTRIC
GENERATION FACILITIES IN HENRY COUNTY,
VIRGINIA, CASE NO. PUE010300

On May 10, 2001, as supplemented on July 5, 2001, Henry County Power, LLC ("Henry County Power" or "Applicant"), filed an application, with supporting testimony and exhibits, requesting that the State Corporation Commission ("Commission") grant it a certificate of public convenience and necessity under the Utility Facilities Act, Chapter 10.1 (§ 56-265.1 et seq.) of Title 56 of the Code of Virginia ("Code") to construct, own, and operate electric generating facilities in Henry County, Virginia (the "Project").

Henry County Power proposes to build the Project within a tract of approximately 250 acres lying south of Centerville Road (Route 620), east of Axton Road (Route 610), and just west of the boundary line between Henry County and Pittsylvania County. The site of the proposed generation facility is located approximately 1 mile southeast of Boxwood and approximately 1/4 mile east of AEP-Virginia's Axton substation. A map showing the approximate location accompanies this notice.

The Applicant states the proposed site is presently zoned for power generation with ready access to electric transmission facilities and natural gas pipelines. The facility would be interconnected to AEP-

Virginia's Axton substation. Natural gas for the facility would be provided by a new gas line with service from the interstate pipeline facilities of Transcontinental Gas Pipeline Corporation located approximately 8 miles from the Project site.

The proposed Project will consist of natural gas-fired generation combined cycle generating facilities with total net generation capacity of up to 1,100 MW. The generation equipment will include four combustion turbines, up to four heat recovery steam generators, and up to two steam turbines and associated auxiliary equipment and supporting infrastructure. Construction is expected to begin in the first quarter of 2002, and commercial operation is expected to begin in the summer of 2004. The Project will operate on a merchant plant basis exclusively in the wholesale market.

Pursuant to § 56-265.B, Henry County Power seeks an exemption from the ratemaking and other regulatory requirements of Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code. The Applicant also requests a waiver of, or exemption from, § 56-234.3 of the Chapter 10, which requires Commission approval before an electric utility makes financial commitments or expenditures for new generation facilities of 100 MW capacity or larger. In support of this relief, the Applicant states that the Project requires expenditures for site preparation and permitting before the Commission will take final action. Henry County Power will undertake these activities at its risk.

The Commission will consider whether a waiver should be granted pursuant to § 56-234.3 and has established procedures for consideration of such waiver. The waiver will be interim pending entry of a final order determining whether the facility should be exempted from the provisions of Chapter 10 (§ 56-232 et seq.) of Title 56.

The grant or denial of an interim waiver of the construction approval requirement will indicate or predetermine whether the Commission will or will not authorize construction and operation of the proposed facilities.

The application may be inspected in the Commission's Document Control Center, Office of the Clerk of the Commission, First Floor, Tyler building, 1300 East Main Street, Richmond, Virginia, during Commission business hours. Copies of the application may also be inspected during regular hours at the Blue Ridge Regional Library, 310 East Church Street, Martinsville, Virginia.

On or before August 6, 2001, any interested person may file with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, an original and fifteen (15) copies of any comments on the Applicant's request for a waiver of the requirements of § 56-234.3 of the Code or any request for a hearing on the issue, and shall serve one (1) copy on counsel to Henry County Power, Stephen H. Watts, II, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030. Any request for hearing should state the specific grounds for a hearing and the evidence that the requesting person intends to introduce at such hearing. The Commission may act on the request for the interim waiver without further notice.

A public hearing on the application for a certificate of public convenience and necessity for the generation facilities will be held on October 17, 2001, at 10:00 a.m. in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive comments from members of the public and evidence on the application. The scheduled hearing on the certificate of public convenience and

necessity will be conducted irrespective of the action the Commission takes on the separate request for an interim waiver of the requirements of § 56-234.3 of the Code.

Any person not participating as a respondent may give oral testimony at the hearing as a public witness. These persons should arrive at the hearing location at least 15 minutes before the start of the hearing and contact the Commission's Bailiff.

Individuals with disabilities who require an accommodation to participate in the hearing should contact the Commission at least seven (7) days before the scheduled hearing date at 1-800-552-7945 (voice) or 1-804-371-9206 (TDD).

On or before August 29, 2001, written comments on Henry County Power's application shall be filed with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Such comments must refer to Case No. PUE010300.

On or before August 15, 2001, any person who expects to participate as a respondent shall file with the Clerk of the Commission at the address set out above a notice of participation as a respondent, as required by the Commission's Rules of Practice and Procedure (the "Rules"), 5 VAC 5-20-80 B, and shall serve a copy on counsel to the Applicant, Stephen H. Watts, II, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23290-4030 and Commission Staff counsel assigned to the matter, C. Meade Browder, Jr., Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218-1197. The respondent shall file and serve the notice of participation as required by the Rules, 5 VAC 5-20-140 and 5 VAC 5-20-150. Any

organization, corporation, or governmental entity participating as a respondent must be represented by counsel as required by the Rules, 5 VAC 5-20-30. The Commission's Order for Notice and Hearing gives the complete procedural schedule and instruction on participation in this case.

A copy of the Order for Notice and Hearing may be obtained from the Clerk of the Commission. The text of the Order may be viewed at the Commission's Web site: <http://www.state.us/scc/caseinfo/orders.htm>.

HENRY COUNTY POWER, LLC

(17) On or before July 25, 2001, the Applicant shall serve a copy of this Order on the chairman of the board of supervisors of Henry County, the Secretary of Natural Resources, the Director of the Department of Environmental Quality, and upon the representative of every Virginia electric utility listed on Attachment A of this Order. Service shall be made by first-class mail or delivery to the customary place of business or residence of the person served.

(18) On or before August 10, 2001, the Applicant shall file with the Clerk proof of the newspaper publication and proof of service as required by Ordering Paragraphs (17) and (18).

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